

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GUY RASMUSSEN,
Petitioner,

v.

RICHARD MORGAN,
Respondent.

Case No. C04-5448RJB

ORDER

This matter is before the court on completion of state court proceedings related to this case and Petitioner's "Final Status Report." After reviewing the record, the court orders as follows.

(1) On March 28, 2005, the court found that and the petition in this case was a "mixed" petition, containing both exhausted and unexhausted claims. After considering Petitioner's motion to stay the matter, the court found it was appropriate to use the "stay-and-abeyance" procedure in which the court dismisses the unexhausted claims while staying the remaining exhausted claims. Pliler v. Ford, --- U.S. at ---, 124 S.Ct. at 2445 (*citing Calderon v. United States District Court (Taylor)*, 134 F.3d 981, 988 (9th Cir.1998)). Once the petitioner has exhausted the previously-unexhausted claims in state court, the court may allow the petitioner to amend the original federal petition by adding the newly-exhausted claims, which "relate back" to the original petition, pursuant to Fed. R. Civ. P. 15(c). Id.; Kelly v. Small, 315 F.3d 1063, 1070 (9th Cir.2003).

(2) Petitioner has since filed two status reports, the most recent report was due March 30, 2006.

1 Petitioner's "Final Status Report" indicates that he received the Washington State Supreme Court's order
2 Denying his motion for Discretionary Review on January 31, 2006. Petitioner previously requested that
3 his grounds #4, 14, and 17 be stricken from his petition, and he asserts that all of his remaining claims have
4 been effectively exhausted.

5 (3) Respondent's Answer was filed on or about November 15, 2004, prior to the completion of the
6 state court proceedings. Consequently, the Answer does not address Petitioner's claim of exhaustion of
7 all his remaining claims,

8 (4) In order to provide Respondent a full opportunity to address the issues presented by the
9 petition, is directed to filed an amended Answer taking into account the fact that Petitioner has stricken
10 claims #4, 14, & 17 from the petition and the more recent state court proceedings addressing those
11 previously unexhausted claims. **The amended Answer should be filed by no later than July 14, 2006.**

12 (5) If Petitioner wishes to file a response or traverse to the amended Answer, such opposition shall
13 be filed by **not later than July 31, 2006.**

14 (6) The Clerk shall direct copies of this Order to petitioner and to counsel for respondent.

15 DATED this 26thday of May, 2006.

16 /s/ J. Kelley Arnold
17 J. Kelley Arnold
United States Magistrate Judge
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